

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TWD – Appeal Petition filed by Sri P.Ravinderanath Padhi S/o Narsinga Padhi, Allena (V), Burga (M) under Section 7 of Act 16 of 1993 against the Proceedings dated 2.12.2003 of the District Collector, Srikakulam – Appeal Rejected – Orders –Issued.

SOCIAL WELFARE (CV.2) DEPARTMENT

G.O.Ms.No. 73

Dated:27-6-2009

Read the following:

1. Proceedings of the Dist.Collector, Srikakulam, No. 3421/1996.C1, dated 2.12.2003.
2. Appeal Petition filed by Sri P.Ravindranath Padhi S/o Narsinga Padhi, Allena(V), Burga (M), before M(TW), through his counsel, dated 6.1.2004.
3. Govt.Memo No. 368/CV.2/2004-1, dated 30.1.2004.
4. Letter from the District Collector, Srikakulam, Rc.No. 3421/96 C1, dated 9.10.2004.
5. Govt.Memo No. 368/CV.2/2004-8, dated 19.3.2008.

ORDER:

Sri P.Ravinderanath Padhi S/o Narsinga Padhi, Allena (V), Burga (M) Srikakulam District filed an appeal petition under Section 7 of Act 16 of 1993 against the Proceedings first read above where the Holva ST caste certificate was cancelled by the District Collector, Srikakulam. The appellant has submitted the following grounds:

1. The order of the District Collector canceling the caste certificate of the appellant is contrary to law, weight of evidence and probabilities of the case.
2. The District Collector ought to have seen that the appellant is belonging to the 'Holva' Community which is Schedule Tribe. There are four sects in Oriya Brahmin's i.e., Holva, Chiktya, Danya and Sanuva. The Holva's are basically cultivators. The origin of the Community Holva comes from the word "Hold" which means "Plough". The origin and historical background of this community was mentioned discussed in i) "The tribes and Castes of the Madras Presidency" written by M.A. Shemning ii) " The Madras District Gazattee Vizagpatnam – 1907 Volume –I, by W.Francies. iii) "Castes and Tribes of the Southern India" by Edger Thurston and iv) 'The Tribes and castes of the central provinces of India' by R.V. Russell

In the aforesaid authorised texts it is, in detail, mentioned about the origin of 'Holva' community and their habits. The appellant also belongs to the said community and is an habitual tribe. The appellant and his family members observed the following habituals as being belongs to the Holva community.

- a) The female members observe 'Gosha' (in seclusion)
- b) They are non-vegetarians and they eat many kind of meat. They eat fish in the festive occasion and in their marriages, they dispense with "Thali Bottu"

Panigrahanam (grasping the bride's hand) and saptapadhi (seven steps) are important in their marriage.

- d) They perform poojas to Grama Devatha called as Ammoru.
- e) The community is established in Vizianagaram, Srikakulam District.

Thus the appellant is an habitual tribe defined in Act 16 of 1993. The District Collector & DLSC failed to give opportunity to the appellant to submit his arguments on the strength of his habitual tribe activities. Hence the order of the District Collector is liable to be set aside on this ground alone.

The District Collector ought to have seen that the entire enquiry alleged to be conducted by the MRO & the RDO is not with regarding to the community habits of the appellant and hence any decision basing on such flimsy reports is legally not valid . Hence the order of the District Collector in canceling the community certificate of the appellant is liable to be set aside according to law.

3. The District Collector ought not have seen that the alleged complaints given by the complainants viz, S.N.Sahu and D.Sahu are false and incorrect. Admittedly, the particulars and address of the said persons are not known to the authorities as could be seen from the letter of the MRO, Bujra in Rc. No.69/2002/B/dt, 13.2.2002 addressed to the District Collector. The said persons were not examined by the authorities inspite of the specific objection raised by the appellant. Hence the DLSC & the District Collector failed to discharge their burden of proving the said complaint and it s only fictitious one and only a myth. Hence the authorities are stopped from making any enquiry regarding the community certificate of the appellant and re not entitled to cancel the certificate of the appellant on the basis of such factious complaints.
4. The District Collector ought to have seen that the authorities have already conducted discrete enquiry regarding the caste of the appellant which he was selected to the post of constable in 1983 and to the post of S.I. ON 1991. Hence the authorities are not entitled to make any successive enquiries after lapse of 22 years according to law.
5. The District Collector ought have seen that the brother of the appellant has given statement that they belong to ' Oriya Brahmin' and not Holva (ST) etc. are all false. In fact, the brother of the appellant has not stated that they do not belong to Holva Community and the authorities have interpreted his statement to suit their case. Even otherwise, the said statement has no evidentiary value since the appellant was not served with the copy of the statement and nor given any opportunity to cross examine him according to law. Hence the authorities are not entitled to use the said statement if any, against the appellant without affording him a reasonable opportunity according to law and also the authorities have not followed the procedure known to law in conducting enquiry and before canceling the caste certificate of the appellant.

2) In reference 3rd read above, the District Collector, Srikakulam, was requested to furnish parawise remarks and connected records on the appeal petition filed by Sri P.Ravindranath Padhi. The District Collector, Srikakulam has furnished his remarks and connected records. The following are the remarks of the Collector, Srikakulam:

- 1.The cancellation order passed by the District Collector is in accordance with rules framed under A.P.SCs/STs/BCs issue of community Nativity , and Date of Birth certificate rules 1997 communicated through G.O.Ms.No. 58, SW Department., dated : 12.5.97 and in the interest of natural justice.
- 2.The caste Holva has been declared as ST at S.No. 17 of ST list in the Constitutional Order 1950.In the Government Memo 2599/F2/83-5(SW) Department, dated :19.4.84 have informed that the Oriya speaking people who claim to belong to Holva caste in fact belong to Holuva caste and not Holva Tribe and that they are Oriya speaking Oriya Brahmins. It is further ordered that no S.T. certificates can be issued to the Oriya speaking Oriya Brahmins belonging to Holuva Caste. As such they are not entitled to be treated as S.Ts. The Hon'ble High Court in its order dated : 28.2.96 dismissed he Writ Petition No 17011/84 filed by Andhra Holva Society , Sirsuvada village, Srikakulam District to squash or set aside the Government Memo 2599/F2/83-5 dated : 19.04.84 among other things and concluded that Holuva community is Oriya speaking Oriya Brahmin. Though they are poor, they cannot be considered socially and educationally backward. The Government in their Memo. No.348/J2/84-5 Social Welfare (J) Department dated : 11.9.96 have instructed as follows :

"In view of the similarity in the nomenclature of Holuva caste and Holva there appears to have been confusion in the matter of issue of scheduled Tribe certificates. It is therefore re-iterated the Oriya Speaking Holuva Brahmins are completely different from Holva Scheduled Tribe. The formers are not STs at all and in no case should ST Certificates be given to them. While issuing the instructions the Government have requested the collectors to examine whether Oriya speaking Oriya Brahmins belonging to Holuva community have managed to obtain the ST certificates and to cancel them".

From the above, the present case of Sri P. Ravindranath Padhi has been established during the discrete enquiries conducted right from village level Mandal Revenue Officer, the Revenue Divisional Officer, the District Tribal Welfare Officer, the Deputy Director TCR & TI, Hyderabad, the Deputy Director, (SW) and police that the individual belongs to Oriya speaking Oriya Brahmin Holuva community by birth. The DLSC perused all documents filed by the individual and various reports submitted by the member of the committee with reference to enquiry reports of Revenue Department and also heard the arguments of the candidate's lawyer. The matter was discussed thoroughly by the Scrutiny committee in the presence of candidates lawyer by giving ample opportunity and decided that he belongs to Oriya Brahmin (Holuva) caste but not Holva and recommended to the Collector for cancellation of Holva ST Caste certificate fraudulently obtained by the individual. The District Collector has peruse the all records, and also gone through written arguments filed by the Advocate ad other relevant documents with reference to the available records and Government rules and passed order for cancellation of false ST caste certificate in the interest of natural justice. The contention that the appellant was not given opportunity is false and baseless and he was given ample opportunity by the District Level Scrutiny Committee as well as Collector.

- 3&4. The contention of the appellant that the entire enquiry conducted by the Mandal Revenue Officer, the Revenue Divisionl Officer is not with regard to community habits and that alleged complaints given by the complainants were not examined and as such the collector failed to discharge their burden of proving the said complaint is not correct. The Collector after perusing all the documentary evidence and reports of revenue, Police , TCR TI , BC Welfare etc., have correctly cancelled the fraudulent ST Caste certificate obtained by the individual. Further, the burden of proof lies with the individual to prove himself belongs to Scheduled Tribe as per Rule 6 of AP SC/ST/BC issue of Community, Nativity and Date of Birth certificates Rules 1997. The individual in his own statement given before the Mandal Revenue Officer , Burja has admitted that except himself in his family no other member has got Holva ST Caste certificate and they are being treated a Oriya Brahmins. This only evidence is enough to prove that the individual with a malafide intention has obtained ST (Holva) caste certificate to grab the benefits extended to real STs.
5. The contention of the appellant is not maintainable. Government have issued clear instructions to take up enquiry on the genuenity of the caste certificates either on receipt of complaint or suo-motto if any certificates have bee issued by the Competent Authority under the relevant rules or orders. Not only if any evidence is brought forth or any report or information is received that a community certificate issued before the commencement of Act 16 of 1999 is false, necessary action under the act and the Rules notified has to be initiated immediately for cancellation of such a certificate.
6. His own brother by name Kamakshi Prasad Padhi in his own handwriting has given statement in the presence of Surpanch, Allen (v) and other witnesses that they belong to "Oriya Brahmins". It proves that the appellant has obtained ST (HOLVA) cast certificate fraudulently by mis-representation only. The appellant never requested the District Level Scrutiny Committee or the Collector to call his brother for enquiry or expressed his intention to cross examine him because he is well aware that he belongs to Oriya Brahmin and obtained bogus certificate by mis- representation to the authorities to grab the benefits of real STs. Because of his malafide intention, one real ST is deprived of his benefit in getting job. As such the appellant deserves severe punishment for knowingly mislead the Government Officials.

3) The case was posted for personal hearing on 5.8.2006, 29.9.2006, 28.10.2006, 31.10.2006, 14.6.2007, 16.8.2007, 20.11.2007 and finally on 27.3.2008. Appellant attended only once on 14.6.2007 and his counsel attended on 27.3.2008.

4) On careful examination of the contention and grounds for appeal in the appeal petition filed by the appellant, order in the impugned proceedings of the District Collector, Srikakulam, para-wise remarks furnished by him, enquiry reports and other materials on file, it is found that :-

1. The appellant himself admitted that his community 'Holva is one of the sects of Oriya Brahmins and the evidences furnished by him such as certain pages from the (i) The Tribes and castes of the Madras Presidency by Sherring, (II) Census of India, Madras, Part-I 1902 by W.Francis, (iii) Castes and Tribes of Southern India by Edgar Thurston and (iv) Tribes an Castes of the Central Provinces by R.V.Russel also disclose that Holva/Holuva os a sect of Oriya Brahmins. But Holva Community which is notified as a scheduled tribe under kotia tribe along with certain other communities is nothing to do with Oriya Brahmins.
2. As per the Enquiry Reports the caste of the appellant and his relatives is recorded as oriya or Oriya Brahmins in their school records.
3. The habits or characteristics of the appellant's caste as given by him such as observance of 'Gosha' by females, Panigrahanam or Saptapadi in their marriages, worship of Ammoru are not found among the Scheduled Tribe 'Holva' Community.
4. The appellant clearly failed to adduce evidences in support of his claim though ample opportunity was given to him by the DLSC and the District Collector.
5. Under Section 6 of the Act 10 of 1993, the burden of proof lies on the claimant, in which the appellant failed to do so. Therefore the appeal petition is devoid of merits.

5) Therefore, in view of the above and in exercise of the powers conferred under Section 7 of Act 16 of 1993, and rules made thereunder issued in G.O.Ms.No. 58, SW (J) Department, dated 12.5.1997, the appeal petition filed by Sri P.Ravindranath Padhi S/o Narsinga Padhi, Allena (V), Burga (M), Srikakulam is hereby rejected, upholding the proceedings No. Rc.No. 3421/1996-C1, dated 22.12.2003 of the District Collector, Srikakulam. The stay granted by the Govt. in the reference 3rd read above are hereby vacated.

6) The records (containing PP.1-55 NF. and PP 1-439 CF)received from the District Collector, Srikakulam in reference 4th read above are return herewith to him, and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,
PRINCIPAL SECRETARY TO GOVT.

To

The District Collector, Srikakulam (WE) Original Record
file bearing No. Rc.3421/96 C1 containing pages CF 430 and NF.56.

Sri.P.Ravindranath Padhi S/o Narsinga Padhi ,
Allena (V), Burga (M), Srikakulam District.

Sri P.Rajasekhar, Advocate,
'Siva Nilayam' 4-118/5, Swaroop Nagar, Uppal,
Hyderabad -39..

Copy to:

The PS to M(TW & RIAD) / PS to Prl.Secretary (TW)
The Director of Tribal Welfare, Hyderabad.

Sf/Sc.

//Forwarded::By Order//

SECTION OFFICER